

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



December 14, 2015

VIA ELECTRONIC MAIL

Mr. Ernest Chrappah, Acting Chairman
District of Columbia Taxicab Commission
Driver Services Suite
2001/Executive Offices Suite 3001
2235 Shannon Place, SE
Washington, DC 20020
ernest.chrappah@dc.gov

RE: #OOG-0003_10.19.15

Dear Chairman Chrappah:

Thank you for your reply to the November 3, 2015, **Notification of Complaint #OOG-0003_10.19.15**. The Office of Open Government (OOG) reviewed all documents supplied as attachments to your response¹ and as an embedded link to the transcript of the October 14, 2015 Office of the D.C. Taxicab Commission General Commission (hereinafter, *Commission*) meeting.

Complaint

On October 19, 2015, the OOG received a complaint from A. Muhammad alleging a vote was taken by the Commission on October 14, 2015, in violation of the Open Meetings Act (D.C. Official Code §§ 2-571 *et seq.* (2015)). Specifically, the complainant alleges that the votes of the Commission are invalid because the Rules of Organization for the Commission (31 DCMR §§ 100 *et seq.* (2015)) do not allow a Commissioner to participate via telephone.²

In response to the November 2, 2015, Notification of Complaint, D.C. Taxicab Commission Chairman, Ernest Chrappah, asserted the “October 14th Meeting was a regularly scheduled

¹ November 18, 2016 DC Taxicab Commission letter from Chairman Chrappah (hereinafter, *Chrappah letter*) included the Quorum Determination and roll call vote tally sheets for each rulemaking and title confirmation reviewed by the Commission; the letter also included a link to the transcript of the October 14 meeting: <http://dctaxi.dc.gov/sites/default/files/dc/sites/dc%20taxi/publication/attachments/10-14-15%20TAXI.pdf> (last accessed 12.14.15)

² *Id.* The Chrappah letter stipulates that Commissioner Elliot Ferguson participated by telephone.

DCTC monthly meeting...and votes were allowed on all issues announced on the DCTC meeting agenda so long as a quorum of DCTC members were present. The agenda was timely posted seven days in advance of the meeting. Under 31 DCMR § 104, a majority of the commissioners in office is a quorum for the transaction of business; a quorum for the October 14th Meeting was three commissioners. At the request of Chairman Chrappah, we determined in advance of the meeting that the term *present [emphasis added]* as used in 31 DCMR § 106.1 includes telepresence...”

Discussion

The purpose of the Open Meetings Act is to provide the public with full and complete information regarding the affairs of government and any official actions taken by government officials.³ Therefore, all Open Meetings Act complaints are reviewed by the OOG with the aim of supporting the policy of the Open Meetings Act, and will strictly construe the application of exceptions to the Act. At issue is whether (1) the Commission met its quorum requirement and properly took formal action as contemplated by the Open Meetings Act; and (2) conducted a “meeting” as defined by the statute.⁴

Quorum Requirement

A quorum of a public body is determined by the enabling statute, or establishing order governing the public body. A quorum of the Commission is defined in 31 DCMR § 104.1 as “A majority of the Commissioners in office shall constitute a quorum for the transaction of business at all meetings of the Commission.” The roll call sheet⁵ for the October 14, 2015, meeting indicates that of the five commissioners seated on the Commission, all but one of the commissioners were present.⁶ The meeting transcript⁷ supports the presence of a quorum, including that of Commissioner Muhammad. As a quorum was properly established, a vote determination was properly taken by those present.⁸ The roll call sheets and the transcription of the meeting both indicate that the votes were taken prior to Commissioner Muhammad’s arrival at the meeting.⁹

³ D.C. Official Code §2-572.

⁴ The OOG has only the authority to investigate alleged violations of the Open Meetings Act pursuant to § 503(a)(4) of the District of Columbia Administrative Procedure Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-593 *et seq.* (2015), and 3 DCMR §§ 10400 *et seq.* (2015)). It does not have the authority to opine on whether the Commission violated its Rules of Organization.

⁵ *See*, Quorum Determination, October 4, 2015, General Commission Meeting DC Taxicab Commission.

⁶ Commissioners Chrappah, Ferguson, Smalls and Tapscott were marked present. Commissioner Muhammad was marked absent.

⁷ <http://dctaxi.dc.gov/sites/default/files/dc/sites/dc%20taxi/publication/attachments/10-14-15%20TAXI.pdf> (last accessed 12.14.15)

⁸ The Chrappah letter provided Vote Determination/roll call vote sheets for all Commission Action Items noted on the meeting agenda
http://dctaxi.dc.gov/sites/default/files/dc/sites/dc%20taxi/event_content/attachments/Agenda-10-14-15-GeneralMeeting-amended-10-13-15.pdf (last accessed 12.14.15)

The OOG finds that the meeting was properly recorded and transcribed as required under D.C. Official Code § 2-578(2); the Commission sufficiently provided a detailed account of what was discussed at the meeting, and the official actions taken by the commissioners who were present at October 14, 2015 meeting.

Definition of a Meeting under the Open Meetings Act

The Open Meetings Act (D.C. Official Code § 2-574(1)) defines a meeting “as any gathering of a quorum of the members of a public body...whether formal or informal, regular, special or emergency, at which the members consider, conduct or advise on public business...regardless of whether held in person, by telephone, electronically, or by other means of communication.” Further, D.C. Official Code § 2-577(a) states that “meetings may be held by video conference, telephone conference, or other electronic means;...provided that reasonable arrangements are made to accommodate the public’s right to attend; the meeting is recorded; and all votes are taken by roll call.”

Chairman Chrappah stipulates that Commissioner Ferguson participated in the October 14, 2015, via telephone. The transcript indicates Commissioner Ferguson’s presence by phone, while all other commissioners, and the public, were in attendance in-person in public hearing room 2023 at 2235 Shannon Place, SE.¹⁰ The Act is not rigid regarding the types of meetings which may be held, and the manner in which commission members may properly participate to fulfill their Commissioner Ferguson acted well within the boundaries of the Open Meetings Act when he participated in the meeting over the telephone. The OOG finds that Commissioner Ferguson’s participation via telephone was proper, and conforms to the requirements of the Open Meetings Act.

Record of Meetings

Although not raised in the complaint, the Office of Open Government calls the attention of the Commission to D.C. Official Code § 2-578(2), which states “A copy of the full record, including any recording or transcript, shall be made available for public inspection as soon as practicable, but no later than 7 business days after the meeting.” The document properties search of the transcript link <http://dctaxi.dc.gov/sites/default/files/dc/sites/dc%20taxi/publication/attachments/10-14-15%20TAXI.pdf> indicates the transcript was created on October 28, 2015, and modified on November 16, 2015. Assuming the transcript was posted at the earliest date of October 28, 2015, the publication of the transcript was untimely. The transcript was to be published on the D.C. Taxicab Commission website no later than October 23, 2015. The OOG finds that the

⁹ The OOG takes note of the referral to the complainant in the November 18, 2015, Chrappah letter as “Comm’r. Muhammad”; and the text of the complaint itself in which the complainant states, “I was not informed or called, but was told after I arrived at the meeting.” The Open Meetings Act does not require 100% attendance by commissioners to take official action, only that the members present constitute a quorum of public body. The Commission properly took official action in accordance with the Open Meetings Act. (D.C. Official Code §§ 2-574(1) and 2-577(3)). The complainant does not allege improper notice of the meeting.

¹⁰ See transcript at page 2, lines 13-16.

<http://dctaxi.dc.gov/sites/default/files/dc/sites/dc%20taxi/publication/attachments/10-14-15%20TAXI.pdf>

Commission violated the transcript publication requirements of the Open Meetings Act. However, as the transcript is properly published and is publicly viewable, the violation is deemed moot.

Conclusion

It is the binding opinion of the OOG that the Commission did not violate the meeting or quorum requirements of the Open Meetings Act with the participation of Commissioner Ferguson in the October 14, 2015, meeting by way of telephone. The Commission did fail to timely publish the transcript of the meeting within 7 business days.

Sincerely,

//s//

TRACI L. HUGHES, ESQ.
Director, Office of Open Government
Board of Ethics and Government Accountability

Attachment

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Page: 1 of 74 Automatic Zoom

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File name:	10-14-15 TAXI.pdf
File size:	463 KB (474,608 bytes)
Title:	1014taxi - Vol. I
Author:	sstyrsky
Subject:	-
Keywords:	-
Creation Date:	10/28/2015, 11:20:28 AM
Modification Date:	11/16/2015, 6:48:15 PM
Creator:	PScript5.dll Version 5.2.2
PDF Producer:	Acrobat Distiller 11.0 (Windows)
PDF Version:	1.5
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Close

The Commission met at 2235 Shannon Place, S.E., Washington, D.C., at 10:00 a.m., Ernest Chrappah, Chairperson, presiding.

COMMISSIONERS PRESENT:

ERNEST CHRAPPAH, Chairperson
ANTHONY MUHAMMAD, Commissioner
STANLEY TAPSCOTT, Commissioner

BOARD OF ETHICS AND GOVERNMENT ACCOUNTABILITY
OFFICE OF OPEN GOVERNMENT



November 3, 2015

VIA ELECTRONIC MAIL

Mr. Ernest Chrappah, Acting Chairman
District of Columbia Taxicab Commission
Driver Services Suite
2001/Executive Offices Suite 3001
2235 Shannon Place, SE
Washington, DC 20020
ernest.chrappah@dc.gov

RE: #OOG-0003_10.19.15

Dear Acting Director Chrappah:

The Director of the Open Government Office, pursuant to the authority set forth in § 503(a)(4) of the District of Columbia Administrative Procedure Act, effective March 31, 2011 (D.C. Law 18-350; D.C. Official Code § 2-593 *et seq.* (2015), and 3 DCMR §§ 10400 *et seq.* (2015)), is investigating an Open Meetings Act (D.C. Official Code §§ 2-571 *et seq.* (2015)) complaint regarding the District of Columbia Taxicab Commission (*hereinafter*, *Commission*). The complaint, **#OOG-0003_10.19.15**, is attached for your review. The complaint alleges a vote was taken by the Commission on October 14, 2015, in violation of the Open Meetings Act.¹

Please provide to the Office of Open Government by November 17, 2015, the meeting minutes for the October 14, 2015, Commission meeting. The Office of Open Government is in receipt of the meeting agenda, relevant rulemakings found on the Commission Website: <http://dctaxi.dc.gov/event/general-commission-meeting-october-0>. Also, please provide any relevant documentation you believe useful to the Office of Open Government in making a determination regarding the above referenced complaint.

Please feel free to contact the Office of Open Government should you have any questions.

Sincerely,
//s//

TRACI L. HUGHES, ESQ.
Director, Office of Open Government
Board of Ethics and Government Accountability

¹ The Office of Open Government (OOG) will issue a determination regarding the Commission's compliance with the Open Meetings Act only. The OOG has no authority to compel public bodies to comply with procedural matters has set out in relevant bylaws and/or in accordance with Robert's Rules of Order.



OPEN DC

Office of Open Government * 441 4th Street, NW, Suite 540 South * Washington, DC 20002 * (202) 481-3411 * opengovoffice@dc.gov

The Office of Open Government (OOG) is an independent office under the Board of Ethics and Government Accountability (BEGA), charged with advancing open governance in the District of Columbia. The OOG ensures city-wide compliance with the Open Meetings Act, which requires all public bodies gathered to consider, conduct or advise on public business to take all official action during public meetings and to provide proper notice and detailed records of meetings.

The OMA Complaint Form may be submitted in person, online at OPEN-DC.gov, or via U.S Postal Service at the BEGA Main Office/Office of Open Government, 441 4th Street, Suite 830 South. Complaints submitted by mail should be marked on the outside of the envelope "Open Meetings Complaint". Complaints may also be submitted by electronic mail at opengovoffice@dc.gov. The submission of complaints via the Website is encouraged so that information is complete, but is not required. The Director will confirm receipt of a complaint within five (5) business days upon receipt of the complaint. The Director will review a complaint within within fourteen (14) business days. Complaints should include details of the meeting complained of, including the Public Body, the date, and to the extent possible the specific provision(s) of the Open Meetings Act alleged to have been violated.

Your Contact Information:

First Name: A _____ Last Name: Muhammad _____
Address: _____
City: Washington State: DC Zip Code: 20020
Phone Number: _____ Ext. _____
Email: anthonymuhammad@yahoo.com

Public Body that is the subject of this

Name of Public Body: DCTC _____
Specific person(s), if any, you allege
Committed the violation: Interim Chair DCTC , and Staff Attorney _____
Date of alleged violation: 10-14-2015 _____

Description of Alleged Violation

Describe the alleged violation. If record(s) could substantiate the complaint, the complaint should identify the supporting record(s); including the location of the record(s). Audio and video records should be accompanied by relevant timestamp information.

Note: This text field has a maximum of 3000 characters.

The Commission meets at 2235 Shannon pl. SE Washington DC 202-645-6602, this is where the meeting was held 10/14/15 10am. I arrive at 11:20am . Votes were take on proposed rules, two Commissioners were present, the Interim Chair, Commissioner Elliott was call on the phone to vote, he hasn't been to a commission meeting, since the Interim Chair has been in the seat. We do not have rules that allow us to take votes on the phone, we have effective council working for the Taxi Commission, that advised the Interim Chair to take a vote from someone that wasn't present. I was not informed or called, but was told after I arrived at the meeting .Please investigate and give me a report on the findings.

What action do you want the public body to take in response to your complaint?

Note: This text field has a maximum of 500 characters.

We would like the Chair of The Taxicab Commission to follow "Robert Rules of Order
We would like the Staff Attorney to give legal advice to the commission, but not dictate to the commission
Allow the Commission to put items on the agenda
Hire DC residents, before they are offered a position on the Commission

Disclosure of Your Complaint

Under most circumstances, your complaint, and any documents submitted with your complaint, will be considered a public record and available to any member of the public upon request. In response to such a request, the office of Open Government generally will not disclose your contact information.

Withdrawal of a Complaint

A complainant may request at any time prior to any of the above actions being taken by the Director, that his/her request be withdrawn from further review. Any such request to withdraw the complaint must be made in writing with "Open Meetings Complaint Withdrawal" on the envelope or in the subject line or heading of electronic correspondence sent to opengovoffice@dc.gov.